

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 16-1653

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Wye Oak Room, Talbot County Community Center, 10058 Ocean Gateway, Route 50, Easton, Maryland, beginning at 7:00 p.m., September 12, 2016, on the application of **CHARLES WALLACE** (“Applicant”). The Applicant is requesting a variance of the 50-foot rear yard setback to obtain an after-the-fact approval for an existing 23.3’ x 26.3’ detached garage located 10 feet from the rear property line. The property is located at 31770 Old Queen Anne Road, Queen Anne, Maryland 21657 in the Agricultural Conservation (AC) zone. It is owned by Charles and Julie Wallace. The request is made in accordance with Chapter 190 Zoning, Article II, §190-13 E (2) (a) and Article IX, §190-182 of the Talbot County Code (“Code”).

Present at the hearing were Board of Appeals members Paul Shortall, Jr., Chairman, Phillip Jones, Vice Chairman, John Sewell, Margaret Young, and Louis Dorsey. Mr. Charles Wallace, the Applicant, testified in support of the application. Jeremy Rothwell, Planner I, Talbot County Office of Planning and Zoning, attended the hearing on behalf of the County. Glenn D. Klakring was the attorney for the Board of Appeals.

It was noted for the record that each of the members of the Board had visited the site individually.

The following exhibits were offered and admitted into evidence as Board’s Exhibits as indicated:

1. Application for variance.
2. Copy of a portion of the Talbot County tax map with the property highlighted.
3. Appeals Notice of Public Hearing.
4. Certificate of publication of the Notice of Public Hearing from the *Star-Democrat*.
5. Notice of hearing with a list of nearby property owners attached.

6. Copy of variance requirements from the Code with the Applicant's response to each applicable requirement.
7. Staff Report dated August 19, 2016, with attachments.
8. Sign maintenance agreement.
9. Site Plan.
10. Site Plan 8½ x 11.
11. Independent Disclosure and Acknowledgement Form.
12. Aerial photograph.
13. Photographs of property taken during staff site visit.

The first witness was Mr. Wallace. He testified that he and his wife purchased the property in August 2014. All of the structures now on the property were in the same location at the time of their purchase and they have not since been modified. They were not aware that the garage had been constructed on the property without a permit and in violation of a setback.

Mr. Wallace said that it was their intent to live on the property indefinitely. Unfortunately his wife Julie decided to end their marriage and left their home. Without his wife's added income, Mr. Wallace found it financially difficult to remain in the home and decided to sell. The contract purchaser of the property discovered the violation. He told Mr. Wallace that he will not purchase the property unless Mr. Wallace obtains a variance that will permit the garage to remain on the property in its present location.

The property is roughly in the shape of two narrow triangles bisected by a forty foot wide property that was formerly used for a railroad line. It has not been used as a railroad for many years. The Delmarva Power & Light Company ("Delmarva") now owns the bisecting property and uses it as a utility right-of-way.

A previous owner of the Wallace property had also constructed or placed at least two other structures on the Delmarva property. Mr. Wallace has or will move one of the structures onto his property at a permitted location and demolish the other.

Mr. Barry Gillman, Long & Foster Real Estate, P.O. Box 236, St. Michaels, Maryland 21663 testified in support of the application. He represented Mr. Wallace in the sale of the property. He said that Mr. Wallace was surprised to find that the garage was constructed without a building permit and in violation of a setback. He confirmed that the location of the Delmarva property is not apparent from a visual inspection.

Mr. Rothwell, Talbot County Planning and Zoning Office, testified that there is no recorded plat for Mr. Wallace's property. He also said that there is no obvious location of the property line and that it appears that the Applicant actually maintains the area behind the garage including some of the neighboring property owned by Delmarva. Mr. Wallace confirmed that he does so and that he was unclear as to where his property was bisected until it was brought to his attention by the contract purchaser.

No one appeared or communicated any opposition to the application.

There being no further evidence the Board considered the application.

After some discussion and upon motion duly made and seconded, the Board made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.
2. Certain unique physical characteristics exist, such as unusual size or shape of the property or extraordinary topographical conditions, such that a literal enforcement of the provisions of the Code would result in practical difficulty or unreasonable hardship in enabling the Applicant to develop the property. The subject property is actually two narrow triangular shaped parcels bisected by a fee simple 40 foot wide parcel, formerly a

railroad and now owned by a utility company and used as a power line right-of-way. There are no obvious markers on the property indicating the extent or location of the bisecting property that might have alerted the current owner that the garage in question was within the rear yard setback. In fact, the Applicant maintained the bisecting property as he also maintained the two separate parcels. The garage is constructed on a cement foundation and while it could be replaced elsewhere on the property the garage itself cannot practically be moved to another location.

3. The granting of the variance is not based upon circumstances which are self-created or self-imposed. The garage was constructed in its current location by a former owner of the property apparently without a building permit. The Applicant purchased his property without any knowledge of the setback violation and without any visual clues that the violation might be there.
4. Greater profitability or lack of knowledge of the restrictions was not considered as sufficient cause for the variance.
5. The granting of the variance will not be contrary to the public interest and will not be a detriment to adjacent or neighboring properties. The bisecting property is used as a utility right-of-way and not likely to be used for any other purpose. The location of the garage will not impact the use of the utility owned property in any way.
6. The variance does not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship. The Applicant is not proposing to expand or change the current use of the garage in any way.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE
TALBOT COUNTY BOARD OF APPEALS,

RESOLVED that the Applicant, **CHARLES WALLACE** (Appeal No. 16-1653) is **GRANTED** the requested variance consistent with the evidence provided the Board of Appeals and subject to the condition he relocate or demolish any other accessory structures on his property that violate the rear yard setback before he conveys title to the property.

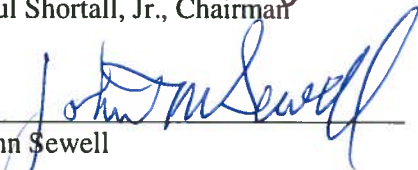
The vote of the Board was four to one to grant the variance.

GIVEN OVER OUR HANDS, this 19th day of September, 2016.

TALBOT COUNTY BOARD OF APPEALS



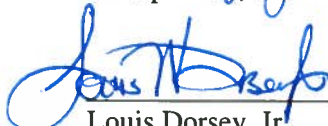
Paul Shortall, Jr., Chairman



John Sewell




Phillip Jones, Vice Chairman



Louis Dorsey, Jr.

The following member of the Board of Appeals voted against the motion to grant the variance. She concluded that the Applicant did not meet the burden of proof that a literal enforcement of the Code would result in practical difficulty or unreasonable hardship. She concluded that the Applicant could relocate the garage on another available portion of his property. She further concluded that the possible expense of such relocation was not a matter the Board should or could consider citing the requirement that greater profitability or lack of knowledge may not be used by the Board as cause for a variance.



Margaret Young

Board of Appeals/1653.WallaceVarianceNCA